

“HOME RULE” IS CHARTERING A CITY A GOOD IDEA?

SYNOPSIS

The Grand Jury studied the issue of charter cities under its watchdog responsibility for the purpose of investigating methods to improve the organization and efficiency of city government operation within San Diego County.

In California, the law recognizes two kinds of cities—charter cities and general law cities. Of the 475 incorporated cities in the state, 102 operate under their own charter. The other cities, general law cities, operate under the requirements of California statutory law. One major advantage of a general law city is that many of the general state laws have been subjected to judicial scrutiny and tested over the years, so there is relatively little confusion about their application. City charters, by contrast, can be much more complicated and can raise many more questions about what can and cannot be done under State law. However, the greatly enhanced local authority and control over its “municipal affairs” which are afforded a charter city provide compelling arguments for chartering. Chartering a city is sometimes referred to as implementing “home rule.”

The Grand Jury concluded that the cost of chartering a city can be minimal compared to the potential benefits and recommends that the 14 non-chartered cities within San Diego County study chartering their cities.

ISSUES

The San Diego County Grand Jury addressed the following:

1. What are the present advantages and disadvantages of becoming a chartered city?
2. Can chartered cities perform their responsibilities more efficiently for their citizens than general law cities?
3. What should a charter contain and what is the best way to gain voter approval?

BACKGROUND

Per the recent census, approximately 85% of the population of San Diego County lives inside the boundaries of one of the 18 incorporated cities. Local voters have formed cities to exercise greater local control over land-use decisions and to obtain a higher level of municipal services. When a city is first created in California, it must be incorporated as a general law city, using the structure and procedures that have been developed under California municipal law statutes.

The State Constitution, Article XI, Section 3, allows any general law city to prepare its own charter to impart a local philosophy into the structure and methodology used to govern its particular city. City charters, which can vary in length from several hundred to just a few pages, must be adopted by a majority vote of the city's residents. Of California's 475 incorporated cities, 102 have chosen to convert from a general law city to a charter city. Four of San Diego County's 18 cities (San Diego, Chula Vista, Del Mar and San Marcos) have converted from being a general law city to a chartered city.

Historically, the primary advantage of the charter form of government has been the potential breadth of local authority which may be exercised. Since the powers of a charter city are not restricted only to those expressed in or necessarily implied from state statutory law, a city can adopt a charter and custom-tailor its organization and elective offices to accommodate unique local conditions and needs. On the reverse side, many city charters have been modified by reformers as the result of abuses of power by a chartered city government. Such charters have served to restrict the powers of a city, rather than broaden them.

Recently, cities have been chartered based primarily upon potential financial benefits. For example, San Marcos, as part of its 1994 chartering election, stated that if San Marcos were to become a chartered city, the following financial benefits would occur¹:

1. Reduce the cost of City government and save millions of dollars in the cost of public improvements;
2. Ensure that more local taxpayers' dollars would remain in the City of San Marcos for police and fire protection services; and
3. Help defend the City against State-mandated programs that do not provide the necessary funding to implement those programs.

¹ City of San Marcos, *Taxpayer's Guide to Proposition H* (Proposed City Charter), Questions and Answers, 17 April 1994.

The Grand Jury reviewed information on chartering provided by the League of California Cities and interviewed City Managers of three chartered cities and three non-chartered cities in San Diego County. The Grand Jury found that the chartered cities were satisfied that chartering has been the right approach for their communities. The City Manager and City Attorney of Chula Vista believe that the extensive use of citizen advisory committees dictated by the Chula Vista City Charter has resulted in more informed and involved citizens. San Marcos officials cite savings of over a million dollars over the past eight years as a result of not having to use “prevailing wages”² in some of their construction contracts. San Marcos has also taken an aggressive approach to involving the City directly in power generation and distribution, as delineated in its charter. This approach has apparently brought SDG&E to the bargaining table to the potential benefit of San Marcos residents.

City Managers of non-chartered cities interviewed by the Grand Jury do not believe that chartering their cities is in the best interests of their communities. They cite that chartering only gains the support of the voters if it addresses a particular problem, such as rent control, that is presently occurring in the community. They also note that chartering can be divisive in a community and that charter amendments can be used by reformers to limit the role of the city.

The advantages and disadvantages of becoming a chartered city have changed significantly over the past 100 years. As the laws defining a general law city have been liberalized and the power of a charter city has been restricted by court decisions, many of the differences between the two city types have disappeared.

PROCEDURES EMPLOYED

The investigation consisted of a review of documents submitted by the League of California Cities and the charters of the cities of San Diego, Chula Vista, Del Mar, and San Marcos in San Diego County. Additionally, documents were obtained from the cities of San Ramon and La Quinta³ regarding their recent studies of the charter city issue. Finally, the City of Oceanside provided a recording of a 2001 study session of the City Council on this issue.

In addition to published material, personal interviews were held with City Managers of selected San Diego County cities—the chartered cities of San Diego, Chula Vista, and San Marcos; and the general law cities of El Cajon, Vista, and Coronado.

² “Prevailing wages” are set by the State of California based primarily upon union wages throughout the State.

³ Citizen groups in both of these cities recently studied chartering their cities. Their studies reflect the current pros and cons of chartering a city. Both cities approved chartering their cities by a public vote.

During the study, a citizen complaint was received by the Grand Jury alleging the improper use by the City of San Marcos of its City Charter to enter the power generation and distribution business. In addition to interviewing the complainant, the Grand Jury interviewed the City Manager and Mayor of San Marcos. The complaint was resolved when the City of San Marcos decided to put this issue on the November 2002 ballot. Also in reviewing this complaint, the Grand Jury obtained a letter from SDG&E to the City of San Marcos offering to create a joint program on energy production and distribution.⁴ Such a program, as outlined by SDG&E, would benefit the residents of San Marcos. SDG&E indicated it would help the City of San Marcos (1) study sites for a new power plant in San Marcos, (2) develop a methodology for sharing savings from remote power generation facilities, and (3) implement a City-wide energy conservation program.

FACTS

- A. San Diego County has 18 incorporated cities of which four (San Diego, Chula Vista, Del Mar, and San Marcos) are charter cities and the remaining 14 are general law cities.⁵
- B. General law cities are organized and operate under Title 4 (commencing with Section 34000) of the California Government Code. The advantage of being a general law city is that many of the laws they operate under have been tested over the years and there is little confusion about the application of these laws.⁶
- C. The authority provided in the State Constitution to organize as a charter city is extended only to an existing city. A charter can only be adopted or changed by a simple majority vote of city residents—not by a vote of the city council.⁷
- D. The potential advantages of being a charter city include⁸:
 - Greater opportunity to impart a local philosophy into the structure and methodology of local city government;
 - Protection from State legislative changes impacting “municipal affairs”; and

⁴ San Diego Gas and Electric, *A Cooperative Energy Program for the City of San Marcos*, February 11, 2002.

⁵ League of California Cities Records as of August 8, 2001.

⁶ California State Legislature, *Tailor-Made Government: A Citizen’s Guide to California’s Charter Cities and Counties*, February 1998.

⁷ *Ibid.*

⁸ Interviews with City Managers.

- Enhanced local authority and control over “municipal affairs,” enabling a city to consider
 - streamlining procedures in public financing,
 - enhancing economic development support activities,
 - revenue enhancement tools, and
 - revising election rules and procedures.
- E. The disadvantages of being a charter city include⁹:
- Exposure to legal challenges with respect to what constitutes a “municipal affair” vs. a statewide concern;
 - Limited case law, in comparison to general law cities, from which to evaluate legal exposure when applying charter language;
 - Costs associated with charter amendments; and
 - Limitations contained within some detailed charter documents restricting local authority beyond that experienced by general law cities.
- F. Matters of municipal concern, not of statewide interest, may be controlled by charter cities, unless restricted by the State Constitution. The power to enact ordinances in areas defined as “municipal affairs” comes to a city from the State Constitution when a city adopts a charter—such powers do not need to be enumerated in the charter. This allows city charters to be relatively simple documents.¹⁰
- G. The tax levying ability for both charter and general law cities is now the same, with the exception that a property transfer tax can be levied by a charter city and not by a general law city.¹¹
- H. General law cities have to follow the procurement methods outlined in the State municipal code for all contracts above \$5,000. Charter cities can set up alternative competitive bidding processes for contracts, which can significantly reduce a city’s contracting costs.¹²
- I. Charter cities are not bound by the requirement to pay “prevailing wages” for public works construction contracts. The State Auditor-General, in a 1988 study, estimated these savings at 10% of the value of the contract. The calculation of “prevailing wage” by the State of California results in the “prevailing wage” being higher than an average local wage. This is caused by the calculation methodology used by the State which gives

⁹ *Ibid.*

¹⁰ League of California Cities, *Charter vs. General Law City*, July 1987.

¹¹ *Ibid.*

¹² Studies conducted by the cities of La Quinta, San Ramon, and San Marcos regarding the pros and cons of being a chartered city cite typical savings of \$100,000 per year.

great significance to union wages. While these savings can be considerable, they can only be achieved on contracts that do not utilize Federal or State funding.¹³

- J. Recent charter city proposals have utilized a short, simplified charter document, which reduces the cost of chartering a medium-sized city (population of 25,000 to 100,000) to less than \$100,000.¹⁴
- K. City Managers of non-chartered cities who were interviewed believe that the benefits of becoming a chartered city do not justify the effort. They said¹⁵:
 - a. Chartering could become a divisive issue among citizen groups who oppose stronger city government;
 - b. City charters require continual updating;
 - c. Chartering no longer provides significant ways to improve city finances; and
 - d. Chartering will only be approved by citizens if there is a particular problem that can be solved by chartering.
- L. A recent study of a proposed city-provided utility service in San Marcos estimated that an average household in that city could save \$120-\$180 a year on electricity and \$108 a year on natural gas over current rates being charged by SDG&E. The City of San Marcos Charter specifically allows the City to provide utilities. General law cities are not specifically prohibited from providing these types of utility services, although existing legislation is much less specific than that in the San Marcos Charter.¹⁶
- M. SDG&E offered to cooperate with the City of San Marcos on energy programs after San Marcos began pursuing an independent role in electrical generation and distribution.¹⁷

FINDINGS

- I. A charter city has several significant advantages for its citizens over a general law city.
- II. The cost of chartering a city using a simplified charter is minimal, compared to the benefits.

¹³ State of California Auditor-General, 1988

¹⁴ Cities of La Quinta, San Ramon, and San Marcos.

¹⁵ Interviews with City Managers and City Attorneys of general law cities of El Cajon, Vista and Coronado.

¹⁶ City of San Marcos, *Electrical and Gas Utility Options Study*, February 2002.

¹⁷ San Diego Gas & Electric, *op. cit.*

- III. There appears to be little interest by the city managers of non-chartered cities in starting an effort to charter their cities, unless there is some compelling local issue.
- IV. Although there is no requirement that a city be chartered to provide electrical power and distribution, San Marcos' aggressive approach to these issues apparently encouraged SDG&E to suggest a cooperative program for the residents of San Marcos.

RECOMMENDATIONS

That the cities of Vista, Carlsbad, Escondido, Encinitas, National City, Solana Beach, Poway, Santee, El Cajon, La Mesa, Imperial Beach, Lemon Grove, and Coronado¹⁸:

02-06: Hold public study sessions to allow their citizens to study the chartering option.

That the County Board of Supervisors (for the unincorporated areas) and the 17 remaining cities of San Diego County (Vista, Carlsbad, Escondido, Encinitas, National City, Solana Beach, Poway, Santee, El Cajon, La Mesa, Imperial Beach, Lemon Grove, Coronado, Oceanside, Del Mar, San Diego, and Chula Vista):

02-07: Develop a cooperative energy program with SDG&E along the lines of the City of San Marcos' program.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. *Such comment shall be no later than 90 days after the Grand Jury submits its report to the public agency.* Also, every ELECTED county officer or agency head for which the Grand Jury has responsibility shall comment on the findings and recommendations pertaining to matters under the control of that county officer or agency head, as well as any agency or agencies which that officer or agency head supervises or controls. *Such comment shall be made within 60 days to the Presiding Judge of the Superior Court with an information copy sent to the Board of Supervisors.*

¹⁸ The City of Oceanside held a public study session on August 22, 2001.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 is required from the:

City Council of Carlsbad

Recommendations: 02-06, 02-07

City Council of Chula Vista

Recommendation: 02-07

City Council of Coronado	Recommendations: 02-06, 02-07
City Council of Del Mar	Recommendations: 02-06, 02-07
City Council of El Cajon	Recommendations: 02-06, 02-07
City Council of Encinitas	Recommendations: 02-06, 02-07
City Council of Escondido	Recommendations: 02-06, 02-07
City Council of Imperial Beach	Recommendations: 02-06, 02-07
City Council of La Mesa	Recommendations: 02-06, 02-07
City Council of Lemon Grove	Recommendations: 02-06, 02-07
City Council of National City	Recommendations: 02-06, 02-07
City Council of Oceanside	Recommendation: 02-07
City Council of Poway	Recommendations: 02-06, 02-07
City Council of San Diego	Recommendation: 02-07
San Diego County Board of Supervisors	Recommendation: 02-07
City Council of Santee	Recommendations: 02-06, 02-07
City Council of Solana Beach	Recommendations: 02-06, 02-07
City Council of Vista	Recommendations: 02-06, 02-07